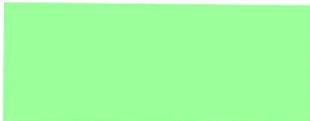


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



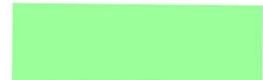
U.S. Citizenship
and Immigration
Services



DATE: NOV 05 2013

Office: TEXAS SERVICE CENTER

FILE:



IN RE:

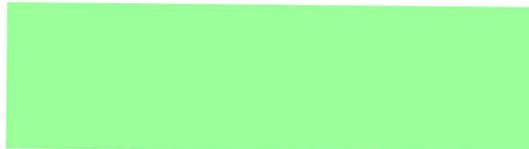
Petitioner:

Beneficiary:



PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Director, Texas Service Center, denied the employment-based immigrant visa petition, which is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner seeks classification as an “alien of extraordinary ability” in the sciences, pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A). The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Congress set a very high benchmark for aliens of extraordinary ability by requiring through the statute that the petitioner demonstrate the alien’s “sustained national or international acclaim” and present “extensive documentation” of the alien’s achievements. *See* section 203(b)(1)(A)(i) of the Act and 8 C.F.R. § 204.5(h)(3). The implementing regulation at 8 C.F.R. § 204.5(h)(3) states that an alien can establish sustained national or international acclaim through evidence of a one-time achievement of a major, internationally recognized award. Absent the receipt of such an award, the regulation outlines ten categories of specific objective evidence. 8 C.F.R. § 204.5(h)(3)(i) through (x). The petitioner must submit qualifying evidence under at least three of the ten regulatory categories of evidence to establish the basic eligibility requirements.

The petitioner’s priority date established by the petition filing date is December 17, 2012. On January 9, 2013, the director served the petitioner with a request for evidence (RFE). After receiving the petitioner’s response to the RFE, the director issued his decision on March 6, 2013. On appeal, the petitioner submits a brief with additional documentary evidence discussed in Part II. A. of this decision. For the reasons discussed below, the AAO upholds the director’s ultimate determination that the petitioner has not established his eligibility for the classification sought.

I. LAW

Section 203(b) of the Act states, in pertinent part, that:

(1) Priority workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with extraordinary ability. -- An alien is described in this subparagraph if --

(i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,

(ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and

(iii) the alien's entry into the United States will substantially benefit prospectively the United States.

U.S. Citizenship and Immigration Services (USCIS) and legacy Immigration and Naturalization Service (INS) have consistently recognized that Congress intended to set a very high standard for individuals seeking immigrant visas as aliens of extraordinary ability. *See* H.R. 723 101st Cong., 2d Sess. 59 (1990); 56 Fed. Reg. 60897, 60898-99 (Nov. 29, 1991). The term "extraordinary ability" refers only to those individuals in that small percentage who have risen to the very top of the field of endeavor. *Id.*; 8 C.F.R. § 204.5(h)(2).

The regulation at 8 C.F.R. § 204.5(h)(3) requires that the petitioner demonstrate the alien's sustained acclaim and the recognition of his or her achievements in the field. Such acclaim must be established either through evidence of a one-time achievement (that is, a major, international recognized award) or through the submission of qualifying evidence under at least three of the ten categories of evidence listed at 8 C.F.R. § 204.5(h)(3)(i)-(x).

In 2010, the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) reviewed the denial of a petition filed under this classification. *Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010). Although the court upheld the AAO's decision to deny the petition, the court took issue with the AAO's evaluation of evidence submitted to meet a given evidentiary criterion.¹ With respect to the criteria at 8 C.F.R. § 204.5(h)(3)(iv) and (vi), the court concluded that while USCIS may have raised legitimate concerns about the significance of the evidence submitted to meet those two criteria, those concerns should have been raised in a subsequent "final merits determination." *Id.* at 1121-22.

The court stated that the AAO's evaluation rested on an improper understanding of the regulations. Instead of parsing the significance of evidence as part of the initial inquiry, the court stated that "the proper procedure is to count the types of evidence provided (which the AAO did)," and if the petitioner failed to submit sufficient evidence, "the proper conclusion is that the applicant has failed to satisfy the regulatory requirement of three types of evidence (as the AAO concluded)." *Id.* at 1122 (citing to 8 C.F.R. § 204.5(h)(3)).

Thus, *Kazarian* sets forth a two-part approach where the evidence is first counted and then considered in the context of a final merits determination. In this matter, the AAO will review the evidence under the plain language requirements of each criterion claimed. As the petitioner did not submit qualifying evidence under at least three criteria, the proper conclusion is that the petitioner has failed to satisfy the regulatory requirement of three types of evidence. *Id.*

¹ Specifically, the court stated that the AAO had unilaterally imposed novel substantive or evidentiary requirements beyond those set forth in the regulations at 8 C.F.R. § 204.5(h)(3)(iv) and 8 C.F.R. § 204.5(h)(3)(vi).

II. ANALYSIS

A. Standard of Proof

On appeal, counsel asserts that instead of applying the preponderance of the evidence standard of proof, the director applied a higher standard. Counsel cites to the most recent precedent decision related to the preponderance of the evidence standard of proof, *Matter of Chawathe*, 25 I&N Dec. 369 (AAO 2010). The *Chawathe* decision stated:

[T]he “preponderance of the evidence” standard does not relieve the petitioner or applicant from satisfying the basic evidentiary requirements set by regulation. There are no regulations relating to a corporation’s eligibility as an “American firm or corporation” under section 316(b) of the Act. Had the regulations required specific evidence, the applicant would have been required to submit that evidence. *Cf.* 8 C.F.R. § 204.5(h)(3) (2006) (requiring that specific objective evidence be submitted to demonstrate eligibility as an alien of extraordinary ability).

25 I&N Dec. at 375 n.7. The final determination of whether the evidence meets the plain language requirements of a regulation lies with USCIS. *See Matter of Caron International*, 19 I&N Dec. 791, 795 (Comm’r 1988) (finding that the appropriate entity to determine eligibility is USCIS in a scenario whereby an advisory opinion or statement is not consistent with other information that is part of the record). Ultimately, the truth is to be determined not by the quantity of evidence alone but by its quality. *Matter of Chawathe*, 25 I&N Dec. at 376 (citing *Matter of E-M-* 20 I&N Dec. 77, 80 (Comm’r 1989)).

As the director concluded that the petitioner had not submitted relevant and probative evidence satisfying the regulatory requirements, the director did not violate the appropriate standard of proof. The standard of proof issue is separate and distinct from counsel’s assertion that the director went beyond the regulatory requirements, which the AAO will address below. Ultimately, the petitioner did not submit probative evidence sufficient to demonstrate his eligibility under the plain language requirements of the criteria.

B. Comparable Evidence

The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable evidence if the petitioner is able to demonstrate that he or she is unable to qualify for this classification because the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the petitioner’s occupation. It is the petitioner’s burden to explain why the regulatory criteria are not readily applicable to his occupation and how the evidence submitted is “comparable” to the objective evidence required at 8 C.F.R. § 204.5(h)(3)(i)-(x). Where an individual is simply unable to meet or submit sufficient documentary evidence of at least three of these criteria, the plain language of the regulation at 8 C.F.R. § 204.5(h)(4) does not allow for the submission of comparable evidence. As the petitioner has not attempted to demonstrate that the regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to his occupation, the petitioner may not rely on comparable evidence to qualify for this immigrant

classification. As such, the petitioner has not established that comparable evidence is relevant to this matter.

Moreover, while counsel does not explain what evidence the petitioner submitted as comparable evidence on appeal, initially the petitioner identified the following documentation as comparable evidence: (1) the petitioner's curriculum vitae, (2) awards received by the petitioner, (3) the petitioner's memberships, (4) the petitioner's degrees and (5) the petitioner's statement of intent to work in the United States. The petitioner's personal curriculum vitae is a list of his claimed experience, education and accomplishments, not evidence of a specific achievement comparable to those listed at 8 C.F.R. § 204.5(h)(3). Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Assoc. Comm'r 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg'l Comm'r 1972)).

The regulations at 8 C.F.R. §§ 204.5(h)(3)(i) and (ii) expressly address lesser nationally or internationally recognized awards or prizes and memberships in associations that require outstanding achievements of their members as judged by nationally recognized experts. The petitioner does not claim that his awards and memberships meet these requirements. Awards and memberships that do not meet the plain language requirements at 8 C.F.R. §§ 204.5(h)(3)(i) and (ii) are not comparable to those that do. Thus, they do not fall under 8 C.F.R. § 204.5(h)(4). Degrees are evidence relating to exceptional ability, a lesser classification pursuant to section 203(b)(2) of the Act. 8 C.F.R. § 204.5(k)(3)(ii)(A). Notably, a degree is not, by itself, sufficient evidence of exceptional ability. Section 203(b)(2)(C) of the Act. Thus, degrees are not comparable to the criteria set forth at 8 C.F.R. § 204.5(h)(3). Finally, evidence of the petitioner's intent to continue working in his area of expertise upon entry into the United States is required initial evidence pursuant to 8 C.F.R. § 204.5(h)(5), and is not also comparable evidence of past accomplishments pursuant to 8 C.F.R. § 204.5(h)(4). Accordingly, the petitioner has not submitted evidence that is comparable to the criteria at 8 C.F.R. § 204.5(h)(3).

C. Evidentiary Criteria²

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that he meets this criterion based on the letter from [REDACTED] Editor in Chief of the [REDACTED]

² The petitioner does not claim to meet or submit evidence relating to the regulatory categories of evidence not discussed in this decision.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The plain language of this regulatory criterion contains multiple evidentiary elements that the petitioner must satisfy. The first is evidence of the petitioner's contributions (in the plural) in his field. These contributions must have already been realized rather than being potential, future contributions. The petitioner must also demonstrate that his contributions are original. The evidence must establish that the contributions are scientific, scholarly, artistic, athletic, or business-related in nature. The final requirement is that the contributions rise to the level of major significance in the field as a whole, rather than to a project or to an organization. The phrase "major significance" is not superfluous and, thus, it has some meaning. *Silverman v. Eastrich Multiple Investor Fund, L.P.*, 51 F.3d 28, 31 (3rd Cir. 1995) quoted in *APWU v. Potter*, 343 F.3d 619, 626 (2nd Cir. Sep 15, 2003). Contributions of major significance connotes that the petitioner's work has significantly impacted the field. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, counsel identifies letters from three experts in the field addressing the petitioner's eligibility under this criterion. The director determined that the petitioner did not meet the requirements of this criterion. Specifically, the director determined that while the expert letters are helpful, the petitioner must demonstrate the major significance of his work through preexisting, independent, and objective evidence.

On appeal, counsel asserts that letters alone are sufficient to demonstrate eligibility under this criterion and that the provided letters qualify the petitioner. The petitioner also submits evidence that three of his articles have garnered a minimal number of citations.

Counsel first discusses the two letters from [REDACTED], Director of Urogynecology at [REDACTED]. Within Dr. [REDACTED] first letter, dated August 9, 2012, she discussed the petitioner's skills, the surgeries he performed, his research abilities, and a publication relating to the petitioner's work that "has great significance because it helps to teach these important measures to the next generations of surgeons." However, Dr. [REDACTED] did not provide the name of the publication or of the title of the petitioner's work within the publication. Dr. [REDACTED] February 6, 2013 letter, discussed the petitioner's original published research relating to "a huge dilemma in the field." Dr. [REDACTED] stated that the leaders in the field are struggling to get more widespread usage of a system identified within the petitioner's published research, and that: "The original research done by [the petitioner] outlines the obstacles in gaining such disseminated usage. This is a major step forward toward solving this problem." While the petitioner's research may be original, Dr. [REDACTED] letter does not establish that his research has made a significant impact in his field. She notes its usefulness in contributing to the possibility of resolving a dilemma within the petitioner's field, but she has not described how it has already resulted in a measurable impact in the field.

Dr. [REDACTED] stated within her February 6, 2013 letter that the petitioner's report on recurrent urinary tract infections "is of major significance because it describes new avenues for therapy for a very

common problem. This may affect the lives of many patients.” In this statement, Dr. [REDACTED] recognizes the potential for the petitioner’s work to impact the field in the future; however, the regulation requires that the impact has already materialized. A petitioner must establish the elements for the approval of the petition at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12). A petition may not be approved if the beneficiary was not qualified at the priority date, but expects to become eligible at a subsequent time. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg’l Comm’r 1971). This evidence does not establish that, as of the priority date, the petitioner had contributed to his field in a significant manner as required by the regulation.

Counsel next addresses the letter from Dr. [REDACTED] the Chairman of the OBGYN Department at [REDACTED]. Within Dr. [REDACTED] November 14, 2012 letter he asserts the petitioner “has made significant contributions to women’s healthcare as a clinician, researcher and teacher” and that he “is one of a very small percentage who has risen to the top of this demanding field” through his research, awards, and his work with women in his practice. However, Dr. [REDACTED] does not identify any contributions that the petitioner has made in his field that might satisfy this criterion’s requirements or explain their impact in the field as a whole. Merely repeating the language of the statute or regulations does not satisfy the petitioner’s burden of proof. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff’d*, 905 F. 2d 41 (2d. Cir. 1990); *Avyr Associates, Inc. v. Meissner*, 1997 WL 188942 at *5 (S.D.N.Y.). Similarly, USCIS need not accept primarily conclusory assertions. *1756, Inc. v. The Attorney General of the United States*, 745 F. Supp. 9, 15 (D.C. Dist. 1990).

Within Dr. [REDACTED] January 13, 2013 letter, he states that he knows from his discussions with physicians across the country, that these physicians “consider the minimally invasive surgical procedures that [the petitioner] describes as an important development.” Dr. [REDACTED] does not, however, identify these physicians or assert that they have adopted the petitioner’s procedures at their hospitals or clinics. Dr. [REDACTED] also describes how the petitioner’s work is original and asserts the petitioner’s alternative to the use of mesh in female pelvic surgery is of major significance in the field in that it provides an alternative to the synthetic mesh about which the U.S. Food and Drug Administration (FDA) expressed concern in 2011. However, Dr. [REDACTED] does not describe the impact the petitioner’s findings have already had in the field. For example, he does not suggest that the field is adopting the petitioner’s alternative. USCIS need not accept primarily conclusory assertions. *1756, Inc.*, 745 F. Supp. at 15.

The record also contains a letter from [REDACTED] dated February 12, 2013. Both counsel and Dr. [REDACTED] assert that Dr. [REDACTED] serves as the Chief Resident of Obstetrics and Gynecology for the [REDACTED]. Nonetheless, Dr. [REDACTED] letter does not bear the [REDACTED] letterhead. Within the letter, Dr. [REDACTED] described how the petitioner, his tutor, has influenced and made an impact on his own medical procedures. The record contains similar letters from two additional residents at Texas hospitals, Dr. [REDACTED] a third year Obstetrics and Gynecology resident, and Dr. [REDACTED] a chief resident. That the petitioner has mentored resident physicians, a postdoctoral training position according to the curriculum vitae of other references in the record, is not sufficient to meet the plain language requirements of this criterion. The petitioner must have made multiple contributions that are of major significance in his field.

MD, discussed the following: the petitioner's research; his presentations relating to case reports; his published material; and his work as a surgeon meeting the needs of an underserved field. Dr. stated that the petitioner's contribution of major significance to medicine is his research on the location of mesh implantation sites in female surgeries that lead to complications. Dr. stated that the petitioner's efforts "will have a profound impact, both on a national and on an international level, in helping scientists and physicians understand the unique properties of these mesh implants and how they can best improve the patient's quality of life when utilized correctly and safely." Again, this opinion relates to a possible future contribution while the regulation requires that the benefit to the field have already come to fruition.

The reference letters the petitioner submitted do not provide specific examples of how the petitioner's work has significantly impacted the field at large or otherwise constitutes original contributions of major significance. The Board of Immigration Appeals (BIA) has stated that testimony should not be disregarded simply because it is "self-serving." See, e.g., *Matter of S-A-*, 22 I&N Dec. 1328, 1332 (BIA 2000) (citing *Matter of M-D-*, 21 I&N Dec. 1180 (BIA 1998); *Matter of Y-B-*, 21 I&N Dec. 1136 (BIA 1998); *Matter of Dass*, 20 I&N Dec. 120 (BIA 1989); see also *Matter of Acosta*, 19 I&N Dec. 211, 218 (BIA 1985)). The Board clarified, however: "We not only encourage, but require the introduction of corroborative testimonial and documentary evidence, where available." *Matter of S-A-*, 22 I&N Dec. at 1332. If testimonial evidence lacks specificity, detail, or credibility, there is a greater need for the petitioner to submit corroborative evidence. *Matter of Y-B-*, 21 I&N Dec. at 1136.

Letters that do not specifically identify contributions or provide specific examples of how those contributions influenced the field are insufficient. *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff'd in part* 596 F.3d 1115 (9th Cir. 2010). In 2010, the *Kazarian* court reiterated that the AAO's conclusion that "letters from physics professors attesting to [the alien's] contributions in the field" was insufficient was "consistent with the relevant regulatory language." 596 F.3d at 1122. The opinions of experts in the field are not without weight and have been considered above. While such letters can provide important details about the petitioner's skills, they cannot form the cornerstone of a successful extraordinary ability claim. USCIS may, in its discretion, use as advisory opinions statements submitted as expert testimony. See *Matter of Caron International*, 19 I&N Dec. at 795. However, USCIS is ultimately responsible for making the final determination regarding an alien's eligibility for the benefit sought. *Id.* The submission of letters from experts supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters as to whether they support the alien's eligibility. See *id.* at 795; see also *Matter of V-K-*, 24 I&N Dec. 500, n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact" but rather is admissible only if it will assist the trier of fact to understand the evidence or to determine a fact in issue). USCIS may even give less weight to an opinion that is not corroborated, in accord with other information or is in any way questionable. *Id.* at 795; see also *Matter of Soffici*, 22 I&N Dec. at 165 (citing *Matter of Treasure Craft of California*, 14 I&N Dec. at 190).

Finally, with respect to the petitioner's publications, the regulations contain a separate criterion regarding the authorship of published articles. 8 C.F.R. § 204.5(h)(3)(vi). If the regulations are to be

interpreted with any logic, it must be presumed that the regulation views contributions as a separate evidentiary requirement from scholarly articles. Publications and presentations are not sufficient evidence under 8 C.F.R. § 204.5(h)(3)(v) absent evidence that they were of “major significance.” *Kazarian v. USCIS*, 580 F.3d 1030, 1036 (9th Cir. 2009) *aff’d in part* 596 F.3d 1115 (9th Cir. 2010). The record contains evidence that three of the petitioner’s articles have each garnered minimal citation. The petitioner has not explained how this level of citation demonstrates that the petitioner’s articles represent contributions of major significance in the field.

Based on the foregoing, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

Evidence of the alien’s authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The director determined the petitioner met the requirements of this criterion. The petitioner has submitted sufficient evidence to establish that he meets this criterion.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

This criterion anticipates that a leading role should be apparent by its position in the overall organizational hierarchy and that it be accompanied by the role’s matching duties. The petitioner also has the responsibility to demonstrate that he actually performed the duties listed relating to the leading role. A critical role should be apparent from the petitioner’s impact on the organization or the establishment’s activities. The petitioner’s performance in this role should establish whether the role was critical for the organization or establishment as a whole. The petitioner must demonstrate that the organizations or establishments (in the plural) have a distinguished reputation. While neither the regulation nor precedent speak to what constitutes a distinguished reputation, Merriam-Webster’s online dictionary defines distinguished as, “marked by eminence, distinction, or excellence.”³ Dictionaries are not of themselves evidence, but they may be referred to as aids to the memory and understanding of the court. *Nix v. Hedden*, 149 U.S. 304, 306 (1893). Therefore, it is the petitioner’s burden to demonstrate that the organizations or establishments claimed under this criterion are marked by eminence, distinction, excellence, or an equivalent reputation. The petitioner must submit evidence satisfying all of these elements to meet the plain language requirements of this criterion.

On appeal, counsel does not address the petitioner’s previous claims relating to his performance in the Israeli military or offer additional arguments relating to these claims. Therefore, the petitioner has abandoned these claims. See *Sepulveda v. U.S. Att’y Gen.*, 401 F.3d 1226, 1228 n. 2 (11th Cir. 2005); *Hristov v. Roark*, No. 09–CV–27312011, 2011 WL 4711885 at *1, 9 (E.D.N.Y. Sept. 30, 2011) (the court found the plaintiff’s claims to be abandoned as he failed to raise them on appeal to the

³ See <http://www.merriam-webster.com/dictionary/distinguished>, accessed on October 22, 2013, a copy of which is incorporated into the record of proceeding.

AAO). The director determined that the petitioner did not demonstrate that he performed in a leading or critical role for [REDACTED] and that he did not establish that [REDACTED] has a distinguished reputation.

The evidence on record is sufficient to demonstrate that [REDACTED] has a distinguished reputation. [REDACTED] was included in the three percent of the nation's hospitals that have at least one department ranked in one of 16 specialties in [REDACTED]. In addition, the hospital had another 11 departments classified as "High-Performing" by this same publication. The petitioner also provided the criteria that [REDACTED] utilized to rank each of the hospital's department. This evidence is sufficient to demonstrate this organization's distinguished reputation.

Regarding the petitioner's performance for [REDACTED] he indicates on his curriculum vitae that his position there was as a resident. The record does not contain an organizational chart reflecting that a resident is a leading role for a hospital. Notably, Dr. [REDACTED] and Dr. [REDACTED] list their residencies under "education" on their curriculum vitae. Dr. [REDACTED] lists her residency and fellowship under "postdoctoral training" on her curriculum vitae. The petitioner provided a letter from [REDACTED] Chairman and Residency Program Director of the Department of Obstetrics and Gynecology at [REDACTED]. Dr. [REDACTED] claimed the petitioner performed in a critical role as a resident at [REDACTED] but did not describe how the petitioner's performance was critical to the hospital as a whole beyond the obvious requirement that the hospital employ competent residents. Dr. [REDACTED] discussed the petitioner's duties as a surgeon for complex surgeries, his graduation from the residency program with honors, his awards from the hospital, his published works, and his presentations at national and international conferences. However, Dr. [REDACTED] did not address where the petitioner fit within the hierarchy of the hospital or the manner in which the petitioner's performance impacted [REDACTED] as a whole.

The plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(viii) requires evidence that the alien has performed in a leading or critical role for "organizations or establishments" in the plural, which is consistent with the statutory requirement for extensive evidence. Section 203(b)(1)(A)(i) of the Act; 8 U.S.C. § 1153(b)(1)(A)(i). Significantly, not all of the criteria at 8 C.F.R. § 204.5(h)(3) are worded in the plural. Specifically, the regulations at 8 C.F.R. §§ 204.5(h)(3)(iv) and (ix) only require service on a single judging panel or a single high salary. When a regulatory criterion wishes to include the singular within the plural, it expressly does so as when it states at 8 C.F.R. § 204.5(k)(3)(ii)(B) that evidence of experience must be in the form of "letter(s)." Thus, the AAO can infer that the plural in the remaining regulatory criteria has meaning. In a different context, federal courts have upheld USCIS' ability to interpret significance from whether the regulation uses the singular or plural. *See Maramjaya v. USCIS*, Civ. Act. No. 06-2158 (RCL) at *1, *12 (D.C. Cir. March 26, 2008); *Snapnames.com Inc. v. Chertoff*, 2006 WL 3491005 at *1, *10 (D. Or. Nov. 30, 2006) (upholding an interpretation that the regulatory requirement for "a" bachelor's degree or "a" foreign equivalent degree at 8 C.F.R. § 204.5(l)(2) requires a single degree rather than a combination of academic credentials). Therefore, even if the petitioner had established that he performed in a leading or critical role for [REDACTED] he would still not meet the plain language requirements of this criterion.

As such, the petitioner has not submitted evidence that meets the plain language requirements of this criterion.

D. Summary

The petitioner has not satisfied the antecedent regulatory requirement of three types of evidence.

III. CONCLUSION

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim and is one of the small percentage who have risen to the very top of the field of endeavor.

Had the petitioner submitted the requisite evidence under at least three evidentiary categories, in accordance with the *Kazarian* opinion, the next step would be a final merits determination that considers all of the evidence in the context of whether or not the petitioner has demonstrated: (1) a “level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the[ir] field of endeavor” and (2) “that the alien has sustained national or international acclaim and that his or her achievements have been recognized in the field of expertise.” 8 C.F.R. §§ 204.5(h)(2) and (3); *see also Kazarian*, 596 F.3d at 1119-20. While the AAO concludes that the evidence is not indicative of a level of expertise consistent with the small percentage at the very top of the field or sustained national or international acclaim, the AAO need not explain that conclusion in a final merits determination.⁴ Rather, the proper conclusion is that the petitioner has failed to satisfy the antecedent regulatory requirement of three types of evidence. *Id.* at 1122.

The petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision. In visa petition proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Otiende*, 26 I&N Dec. 127, 128 (BIA 2013). Here, that burden has not been met.

ORDER: The appeal is dismissed.

⁴ The AAO maintains de novo review of all questions of fact and law. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004). In any future proceeding, the AAO maintains the jurisdiction to conduct a final merits determination as the office that made the last decision in this matter. 8 C.F.R. § 103.5(a)(1)(ii). *See also* section 103(a)(1) of the Act; section 204(b) of the Act; DHS Delegation Number 0150.1 (effective March 1, 2003); 8 C.F.R. § 2.1 (2003); 8 C.F.R. § 103.1(f)(3)(iii) (2003); *Matter of Aurelio*, 19 I&N Dec. 458, 460 (BIA 1987) (holding that legacy INS, now USCIS, is the sole authority with the jurisdiction to decide visa petitions).